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Case and Comment

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IN THIS ISSUE

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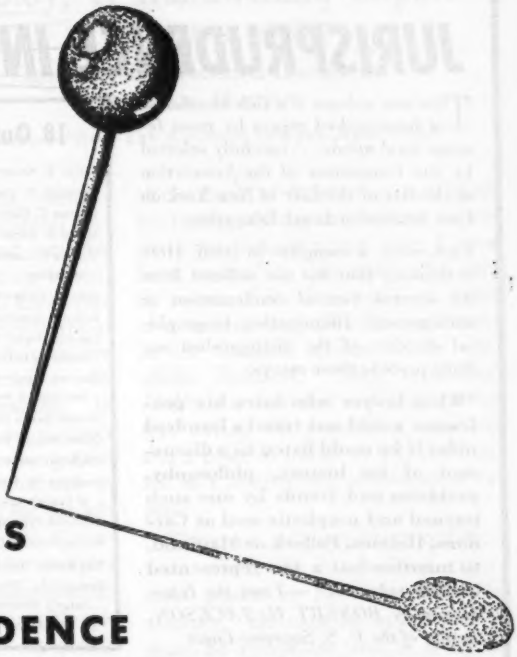

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How To Select, And When To Employ, A Handwriting Expert

By GEORGE G. SWETT
Examiner of Questioned Documents
St. Louis, Missouri

Condensed from The Alabama Lawyer, April, 1953

IN MEDICINE, engineering, chemistry, and most of the technical sciences, standards are set and must be met by the individual desiring to embark upon a career. We all know that a physician must have education, training and experience of a certain calibre to obtain a license to practice. So it is in many other professions. In selecting a physician or an attorney from the telephone book the person seeking services is almost certain to obtain a man who is fitted for his job. Not so the handwriting expert. Knowing little or nothing of the complex science of handwriting identification, an individual may hang out a shingle and commence "clipping" the public. Even more pitiful, he can go into court and through perjury or because of many obstacles placed in the path of the trial judge, qualify as a handwriting expert.

It is at infrequent intervals that the average attorney has need for the services of a handwriting expert. Yet when such a need arises, the lawyer is faced with a decision of utmost importance. Who shall be retained to do the work? A case involving hundreds of thousands of dollars may turn upon the findings of the handwriting expert but, incredible as it may seem, I have been retained in important cases only by reason of the fact that I am listed as a handwriting identification expert in the classified section of the telephone directory. This, remember, despite the fact that any charlatan or tyro having the price of a telephone and a place to install it, may list himself as a handwriting identification expert.

There are two important qualifications which the handwriting expert *must* possess to be of value to the attorney. He must be *honest* and he must be *competent* and it is up to the attorney, or the person recommending the expert to an attorney, to know or determine these qualifications. There are in the United States today a great many pseudo-handwriting experts who are incompetent or dishonest or both. The dishonest practitioner will invariably lean the way his client wishes to go. Scrupulously honest lawyers have been victimized by these operators. Attorneys have been lulled, elated and confident until that horrible day of

reckoning in court when the props are knocked from under the "expert" who, incidentally, has received a tidy sum for his services to date. Incompetents are less vicious but the end result is the same. They are not less destructive.

How, then, may the attorney proceed in the selection of a handwriting expert? Of course, there is no foolproof procedure but suggestions can be offered and, if the suggestions are followed, the odds are strong that the attorney will come up with an honest, competent handwriting expert. Fortunately, the competent expert is usually an honest one—he need be no other way—so to establish the fact that the expert is honest, it is usually necessary to establish only that he is competent.

To determine competency, it is first imperative that the attorney meet the prospective expert face to face and "size him up." The document examiner is a scientist and should have always the scientific approach to any problem. He is not a mystery man and any attempt on the part of the expert to make himself appear so, or to establish a proclivity for the occult should be a warning. The well-established expert will be operating in nearly every instance from his own office in a respectable business location. For varying reasons a few competent experts operate their businesses from their homes. But they will meet the other requirements set out here.

When the facts in a case are presented to the competent expert, he will give no immediate or "curbstone" opinion. Experience has proven that there is no such thing as an "easy" document case and that first impressions are likely to be erroneous. The attorney will not be assured immediately that he has "nothing to worry about," but will be advised that his position will not be known until the expert has had opportunity to examine and study thoroughly the problem presented. The competent examiner will insist upon examining original documents. In some cases, examinations must be based upon photostat copies, but wherever there is any possibility of obtaining the original document, the competent examiner will persist in his efforts to study it until every possibility has been exhausted. When conducting examinations from photostats, the utmost caution must be exerted by the examiner.

The competent handwriting expert will rarely brag about his "big cases" but will, upon request, give a history of his activities, including case titles, dates and places of trial and the names of attorneys involved, provided the cases are not currently active. He should be asked this information and the attorney should inquire into the expert's past operations whenever feasible. It is always important to inquire of counsel who have opposed the expert. In almost every instance, even though he may have hurt their case, the competent expert has impressed his adversaries by his fairness and will draw from them a favorable recom-

Case and Comment

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mendation. Other important data along this line include the length of time the expert has been engaged in his profession, the scope of his qualifications and instances of appearance in court. The scope of qualification is most important. This includes the expert's education in the general field, but particularly in the field of special subjects related to his work. It must be realized that there are no formal training courses to be enjoyed, but every competent expert has had the opportunity of working with other competent, well-qualified men or is in constant consultation with them through societies or organizations.

Here, a warning. Words are cheap and statements should be verified. In one instance an expert had been testifying under oath for a number of years that he had been trained at a prominent European university and possessed experience gained at England's renowned Scotland Yard. Finally, under a careful cross-examination it was revealed that he had attended one or two lectures at the university during a summer junket to Europe and, on the same trip, had taken the regular visitor's tour through Scotland Yard.

There is no question but that the modern, properly equipped, competent document examiner can solve a variety of document problems including, as instances, the restoration of erasures and eradications, the age of paper, sequence of interlineations, the identification of typewriting and many others. The experienced document examiner knows, however, that the method of procedure that was successful in one case may not work in another. He will avoid blanket statements of assured success in such technical processes and will explain carefully that while a certain method was successful in a prior similar case, that method would have to be applied to the problem at hand to determine success or failure.

There is one thing to which the attorney must be resigned. If he desires and is to receive the best service available, he is going to have to expect to pay for that type of service. The fees of the competent examiner are never low. Retaining an expert because his fees are low is exactly like stopping the clock to save time. Nothing whatever is gained. There is one point to be mentioned here. The expert's fees are necessarily flexible; that is, no one would expect him to assess in a million dollar lawsuit the

same fee he would set in a thousand dollar case, yet both need his services. As in all professions, the problem of fees is a knotty one, but the size of the fee should not be allowed to govern the selection of the expert unless, of course, the fee quoted is entirely out of line with the potential value of the service to be rendered. It should be obvious to all that the expert cannot accept cases on a contingent basis. The attorney is in any circumstance interested in the outcome of the case. The expert witness must not permit the outcome of the litigation to determine the size of his fee.

The expert should be consulted in the very early stages of a case for several reasons. One reason is that it is entirely possible that after receiving the report of the expert and before getting a sizeable amount of money invested in the case, the attorney will want to advise his client to withdraw. Another reason is that the expert should be given ample time to conduct his examination in a thorough manner. On a number of occasions attorneys have consulted the writer on the very eve of a trial. In some cases it has been possible to assist the lawyers and in others the time element has made participation impossible. In every case it was impossible to be of as much assistance as it would had time been available to study the case thoroughly. Then, there is one other consideration. Unless he is limiting himself to the acceptance of a few cases a year for some reason, the competent expert is a busy man. Those waiting until the last moment to engage his services may find him unable to accept employment because of prior commitments.

It has been said aptly that the opinion of an expert is no better than the reasons he gives for having reached it. Thus, the expert should go into court prepared to explain in detail the logic of his findings. This can be done only if proper photographs are made and presented and the expert has devoted sufficient time to his study to give all the facts to the court and jury and answer fairly questions presented during cross-examination. This contemplates a detailed study of the case and the preparation of photographs. Time is needed in large doses! With regard to photographs for presentation in court, the competent expert will maintain and operate his own photographic laboratory. In the first place, photographs personally made by the expert or made in his laboratory under his supervision will encounter no difficulty in admissibility. Further, in many cases the ordinary commercial photographer is ill-equipped to accomplish the special photographic work so often necessary in document cases. Then, too, by doing his own work the expert is certain that the often justified elements of secrecy and surprise are protected.

It is believed that the suggestions offered will be of value to the attorney confronted with the necessity of ob-

mining the services of a man who should be highly skilled in his profession—a profession with which most attorneys have only a nodding acquaintance. One thing may be mentioned which is worse even than consulting an expert too late and that is not consulting one at all. Most attorneys, after using a competent expert, readily admit that they had no idea of *what* could be accomplished nor had they a clear idea of *how* such could be accomplished. The average attorney would be astounded if he knew the number of spurious documents that go into the record simply because they are never challenged.

Magna Carta—Schoolboy Version

History masters have a lot of quiet fun reading essays by their less intelligent pupils, but this essay by an American schoolboy caps anything they are likely to read for some time:

"On a beautiful evening in August 1582 Queen Elizabeth entered the ancient town of Coventry and, divesting herself of her clothing, mounted on a snowwhite stallion and rode through the principal streets of the city.

"On her way she met Sir Walter Raleigh, who, observing her naked condition, threw his cloak about her, crying: 'Honi soit qui mal y pense' which, being translated, means: 'Thy need is greater than mine.'

"The Queen graciously responded, 'Dieu et mon droit,' which translated means, 'My God you are right!' This incident is called the Magna Carta."—*Cape Times, Cape Town, S. Africa.*

Sound Advice

A young lawyer, beginning what proved later a brilliant legal career, was commissioned to draw a contract for a new client. He worked long and carefully, achieving a document of which he was rather proud.

Partly in pride, partly to be on the safe side, he showed it to a wise, old attorney of his acquaintance. He was shocked that, after reading it, the old lawyer handed it back and shook his head.

"This is a skillfully drawn contract, son," he said, "but you have forgotten the rights of the other fellow. You must always remember that no contract is sound which neglects the rights or equities of any party to it."—*Horizons,* syndicated by Cambridge Associates.

The Lawyer: His Profession, His Clients, and His Fees

By JACOB V. SCHAETZEL

Of the Denver, Colorado Bar

WITH THE possible exception of the relationship of doctor and patient, there is probably no closer relationship of trust and confidence than that which exists between a lawyer and his client. This is the reason for all the safeguards thrown around our profession for guarding confidential communications between lawyers and their clients.

Why shouldn't this same friendly and trustful attitude remain throughout the entire matter entrusted to lawyers, from the very beginning to the very end of all litigation or legal work entrusted to them. This can be accomplished if lawyers and their clients will follow a few fundamental rules.

There are, however, far too many unpleasant upsets between lawyers and clients when the work has been done and the time arrives to discuss the lawyer's fee. It is seldom that a client will express appreciation for a job well done. More often, he will start complaining of delays and the result obtained, even though he was satisfied up to the time the fee was named. At this point all concerned are oftentimes unhappy. The client makes wild statements of overcharges, work not done to his satisfaction, and unpleasant suggestions that friends have had the same work done at half the named fee. The lawyer often answers back quite heatedly, and before they are through a compromise fee has been reached which leaves both unhappy and dissatisfied. Much of this can and should be avoided.

The proper time to approach the delicate and touchy subject of fees is when the prospective client first phones and makes inquiry as to what the fee will be, or when he first comes into the office.

If the inquiry is made by phone, the prospective client is often shopping around to find the best bargain he can. In this situation the lawyer should frankly reply that there are many details connected with a matter of this kind to be considered, that he does not want to do an injustice to client or to himself, and that if the client will come in and give a frank statement of the work to be done, he in turn will be given an estimate of the costs and fee, *without charge* and

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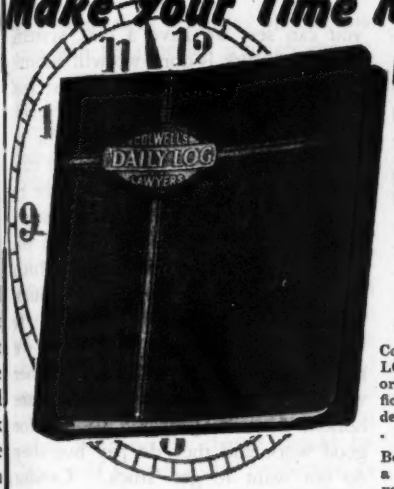

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with no obligation to retain the lawyer.

If and when the prospective client does come in, I often find it helpful to have him think it over and phone for an appointment, if he is satisfied. This method gives the lawyer an opportunity to explain office expenses, time to be consumed in briefing, interviews, and the multitudinous other details necessarily involved in the most ordinary matters requiring a lawyer's attention. The lawyer has one slight advantage in naming the fee. The client generally wishes to retain him as his attorney for reasons best known to himself, or he would never have phoned or have come to the lawyer's office.

Many times clients who have had no previous experience with lawyers (and, according to one authority, there are one hundred million of them) are shy and hesitant about discussing fees and costs. To such I make the first approach by asking if they would like to know approximately what it will probably cost them in fees and costs. One prospective client told me that she didn't know it was permissible to discuss these matters with attorneys.

In our office we have tried the method advocated by Reginald Heber Smith in his article of Law Office Management (sold by the American Bar Association for 50 cents). Mr. Smith says: "The best answer to the question, 'What will it cost?' is the truthful one, 'I cannot tell you. I can tell you that we keep careful records, these you can see, we have a cost system, when the work is done we will submit a bill we believe fair. You must feel free to discuss this with us if you want. You are not letting yourself in for an indeterminate liability because our rule is that *you yourself* have the right to fix the bill.' That rule means exactly what it says. The client can fix his bill. Barring cases of fraud which are covered by the Canon of Ethics, we do accept the client's decision. If we feel he is being unfair then we respectfully decline to accept further work from him. Most clients are honest, they are prepared to pay for good work and they do pay but they do not want to get 'stuck.' Candor and openness go a long way with nearly all clients."

I unreservedly approve of Mr. Smith's method, and can state that after five years of following his suggestions I am entirely satisfied that it has brought to our office legal work we otherwise would not have had. Of course, there have been some disappointments. All human nature is frail. In the few cases where we thought the client was not fair, and he wanted us to do other legal work for him, we either named a definite fee or told the client we were too busy to take his case. I believe he understood the reason without being told.

No lawyer can in fairness to himself and his client name a reasonable fee without knowing with fair certainty whether the adversary will put up a

hard court fight or settle; whether the case will be appealed through one or more courts; whether depositions will be taken either locally or in foreign jurisdictions; and whether a client insists on taking more time than is reasonably necessary on his case.

Have you ever stopped to think how easy it would be to determine the hourly rate you should strive for if you want to earn a certain amount each year? Just take out your 1952 income tax return. Divide your gross income from your practice by the number of productive hours you spend each year and you have a fairly good idea of what your hourly charge should be. You will spend 1,410 productive or chargeable hours in your work during 1953, providing you can put in six such hours each day for 235. If you do so, that is just 410 more hours than McCarthy, his book *Law Office Management,* says the average lawyer can put in on productive legal work. But let us assume that figure of 1,410 hours. The balance of the time is taken up in work for which no productive results can be expected, and in Saturdays, Sundays, holidays, and a two-weeks' vacation. If you grossed $10,000 last year and divided this amount by the 1,410 hours, you will come up with $7.08 per hour. From this one-third should be deducted for overhead expenses; this leaves only $4.72 per hour, and you still have Uncle Sam to pay! He is a real partner in your business, believe it or not.

Rent, stenographers, telephone, and all the other items that go into the cost of doing business have tripled in the past ten or twelve years. In addition, the cost of living has gone up 178%, according to the government surveys. But the average lawyer's fees have risen but 58%! That leaves us holding the bag to the tune of 120%. Many of us have been unable to overcome this handicap and are looking to other sources to add to our income.

Doctors have more than overcome the problems of meeting the ever-rising costs of doing business. So have the dentists. In fact, all but those on fixed incomes and lawyers are doing all right. We have no Social Security benefits, yet we are paying for them. Our assets, consisting of our education, investment in books and office furniture, and good health are being depreciated without future benefit to us. Many lawyers can only look forward to an old age pension for themselves and their wives, and the satisfaction of having done well for their clients and their country.

A Bar that is not meeting its reasonable economic needs is a deteriorating Bar and is not a credit to our profession, our Bar associations, and ourselves. We can and should improve our financial needs in a way that will be fair to all. One way would be to get a special investigator and prosecutor to go after all those now practicing law who are not qualified or licensed by the authorized courts of our land. These people and these

institutions are a menace to those who go to them for advice or services, and they are undermining one of the greatest professions on earth. People who go to the unauthorized practitioner are unable to get the unbiased legal services they receive from lawyers; they get only part of an answer. Advice, when given, should be unbiased, learned, and sympathetically given. Only lawyers can give this type of service, by reason of training, ethics, disinterestedness, and a background of honesty running back through centuries.

Law partnerships can and do work out more efficiently, at less cost, and with less time required to perform the client's work, than can possibly be done by the solo practitioner.

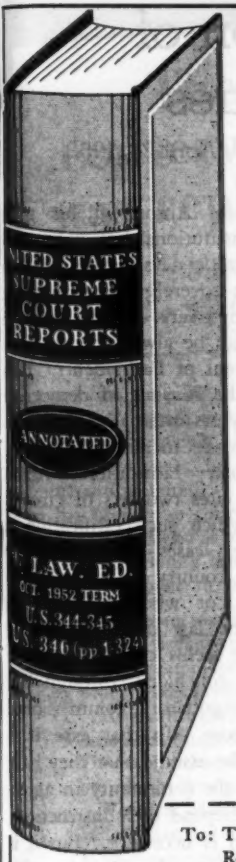
The use of modern systems of filing, voice writing, forms, and typewriters are a great help to the lawyer in reducing overhead. Careful records of the time consumed in personal and telephone conversations will also pay off. Clients who know that you are keeping time records will not call on trivial matters, or take more of your time than is necessary.

The greater and proper use of bar association schedules on fees would be of great benefit to lawyers and clients alike. Turning over indigent clients to our legal aid societies will also enable us to devote more time to productive work, and at the same time we are turning the client over to an agency that has the time and ability to thoroughly and efficiently advise him on his problems.

Bar associations in general should strike out in new paths to enlarge the usefulness of lawyers in their communities. The traditional independence of the lawyer or the dignity of the profession is not impaired if careful thought is given to the problem. Witness the hospital and Blue Cross plans of the medical profession. They are well received and those using such plans receive better medical treatment than ever before.

Why shouldn't we, as lawyers, advance our cause? The law has had a glowing past and can have even a more glorious and useful future. Why not let people know what we can do and what we stand for, and never let our profession be slandered without a reply. Legal work properly and promptly done, with a fee fairly charged, will long be remembered when the size of the fee is forgotten.

Lawyers are individualists—of that there can be no doubt. But I do not think we should let our individualism get the better of our judgment in handling our offices in a business-like way. Let us be alert, ethical, and efficient! If we do this, it will strengthen not alone our profession, but also our Country.



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The Ratification of [British] Treaties

Reprinted from The Law Times (England), April 24, 1953

RECENT discussions in the House of Lords as to whether a treaty just concluded—and one possibly to be concluded in the future—between the British and Egyptian Governments should not be made subject to Parliamentary ratification before coming into effect have directed attention to a thorny point of constitutional law.

The making of treaties, as also declarations of war and the conclusion of peace, has always been in law a matter lying well within the Prerogative of the Crown, the monarch of course acting on the advice of his counsellors. Blackstone states the law firmly: "It is by the law of nations essential to the goodness of a league that it be made by the sovereign power and then it is binding on the whole community and in England the sovereign power is vested in the person of the king." There is, according to this authority, no power which can prevent the sovereign, i.e., the Government of the day, from concluding any international agreement that he or they may fancy, however such may conflict with the wishes of the general community. But Blackstone significantly adds that Ministers who have given advice contrary to their country's interests may incur the penalty of parliamentary impeachment.

Sir William Anson, in his great work on constitutional law, writing in more democratic days, agrees that no one but the sovereign can bind the community by treaty. But he adds the question: Can he always do so without the consent of Parliament? It is a mark of the advance of democracy that of late years international treaties have been made increasingly subject to parliamentary ratification. Anson immediately cites two sets of circumstances in which such ratification is indispensable: cases where a treaty involves the country in financial responsibilities, or where it makes a change in the law of the land. A third case, it seems certain, is where a treaty is concluded through the agency of negotiators commissioned for the purpose. In that case it is necessary to be assured that they have not involved the community in agreements going beyond their instructions. So ratification is necessary. But it is not necessary in all cases that this should be done by Parliament. Lord Reading was perfectly right in declaring, a month ago, that ratification is part of the treaty-making power possessed by the Prerogative and is an executive act of the Government of the day. No provision in the British constitution parallels the necessity for

Senatorial ratification required in the

tween territories acquired by "occu-

Senatorial ratification required in the United States. Where, however, legislation is required to make a treaty practically effective, Parliament must obviously be consulted. And in cases of special importance the Government may be well advised to invoke the approval of the legislature.

Various examples in the last two centuries have revealed that the practice in such matters has varied widely. Many such have turned on the circumstances of cessions of national territory, either effected in peacetime or as the result of the conclusion of wars.

In 1783 a treaty brought about the cession of Minorca and Florida as well as the renunciation of sovereignty over the American colonies. These cessions were entirely unsupported by any Parliamentary ratification. It is true that an Act of Parliament had been passed empowering George III to make peace with the colonies; but the statute contained no reference to any surrender of sovereignty, and in the House of Lords Lord Loughborough contended hotly that the King had exceeded the limits of his Prerogative. He was, however, countered by the opinion of Lord Thurlow. The objections taken were apparently mainly adopted for purely party ends.

A similar question was raised on the abandonment of sovereignty over the Orange Free State in 1854, and on this occasion Sir Alexander Cockburn, then Attorney-General, defended the arrangement by what seemed a novel argument, drawing a distinction between territories acquired by "occupancy" and those acquired by conquest. In the latter case—of which the Orange Free State was said to be an example—the cession had no need of parliamentary sanction. The subjects of the acquired colony had not secured any right to share in the laws and institutions of England, and the subjection to the Crown could be "given away."

An example on the other side is to be found in the treaty of 1890 which ceded Heligoland to the German Emperor. Queen Victoria was very reluctant to conclude the treaty and was advised to make the cession conditional on ratification by Parliament. The House of Commons, to whom the question was submitted, manifested some striking differences of opinion as to the constitutionality of such consultation. Gladstone contended that Parliament was not concerned with a question which was definitely part of the Prerogative, while Balfour maintained that the necessity for Parliamentary sanction was supported by "eminent legal authorities." Goschen, taking a middle course, admitted a departure from regular practice but refused adherence to the theory that the assent of Parliament was indispensable to treaty-making or to cessions of territory.

Sir William Anson (1935) concludes that it may now be regarded as settled that territorial cessions require parliamentary ratification, but that there are still cases well within the powers of the Crown and the Govern-

ment in which such approval need not be sought. As previously stated, where a treaty imposes financial burdens of the community—as, for example, treaties of commerce, which may affect scales of import duties—parliamentary sanction is essential. The curious result may follow that, while a treaty is perfectly valid "internationally", it may be completely without effect so far as British subjects are concerned.

She Got her Decree

There's even a sense of humor detectable in the divorce courts. Take the case of a Chicago woman, who happens to be deaf. She sued her husband for divorce. When asked for grounds, the bride explained that her groom's sign language was abusive, to wit: "He used language I never *saw* before!"—*Hy Gardner, Parade.*

It's Law in India

Laws in India permit falsehoods in two instances: when it is a matter of saving a life, or when it is a case of complimenting a woman.—*Le Digeste Francais,* Montreal. (QUOTE translation)

INVESTIGATIVE PHOTOGRAPHY

By FRED WITMAN

*State Licensed Investigator, Los Angeles, California**

Condensed from Los Angeles Bar Bulletin, August, 1951

PHOTOGRAPHY now makes it possible to tell clear, honest, stark facts in the courtroom. Its role in legal matters is bound to expand at an accelerating rate with the coming years.

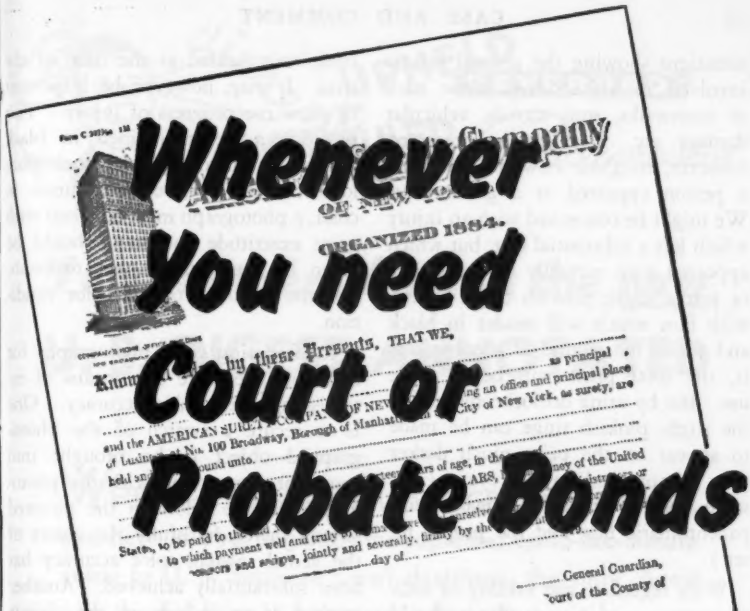
Such use of photography, however, creates problems of two sorts: (1) admissibility of photographs in evidence; and (2) their validity. As an investigator, it is not for me to be concerned with the first point. Anyone taking a picture for court use, however, should be sufficiently well-instructed in the case to take photographs which illustrate the points at issue, so there will be no question as to their relevancy.

What is a valid photograph? It is a picture which truly represents what it purports to represent. This is not as simple as it seems, however, because, except for photographic copies of documents or other flat surfaces, the ordinary photograph reduces to two dimensions what, in reality, is a three dimensional object or scene. In addition, in "black and white" photographs, the photographed objects are rendered in shades of gray running from pure white to absolute black, although their real colors may have been as varied as the rainbow itself.

In analyzing a photograph, if distances are important, it is possible to produce three dimensional measurements from it with remarkable precision by the application of certain known distances to the whole in a scaled perspective rendering. To illustrate, there has been a murder. The police have made photographs of the scene. Later, the newspapermen arrive and take their photographs. A critical piece of evidence appears in both sets of pictures, but at seemingly different positions from the body. From the two sets of photographs it is possible to determine whether the critical piece of evidence had been moved during the interval between the two sets of photographs, despite testimony to the contrary. Substantial movement would not have to be submitted to perspective analysis.

In the case just suggested, the color of the object would not be important, and black and white rendition would be adequate. This is true of many

* Mr. Witman limits his services to civil and criminal investigations for attorneys.



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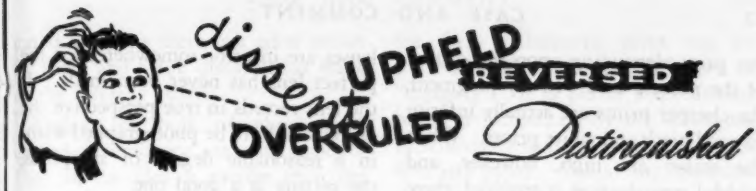
situations showing the general factors involved in an accident scene such as crosswalks, stop signals, vehicular damage, etc. It might be necessary, however, to show how an injury to a person appeared at a given time. We might be concerned with an injury which left a substantial scar, but which appeared with virtually no coloration, or just a slight pinkish tinge. Here, with film which will render in black and white the wound as the eye sees it, the final print will be of little use. But by using orthochromatic film the slight pinkish tinge can be made to appear on the print much darker than it appeared to the eye. (The same result can be achieved with panchromatic film and the proper filter.)

With regard to the validity of such a picture, my opinion is that it should be offered in evidence with the explanation that, to show the extent of the wound, it was necessary to use technical means. I point this out because panchromatic films are designed to see things in terms of black and white in translated intensities as the human eye sees them. To use techniques that hide or reveal color intensities substantially different from their evaluation by the human eye is a fraud unless there is some valid purpose and the explanation therefor is made by the offering party.

If color is at the heart of an issue, there is then no substitute for color photography. Very frequently severe injuries will be superficially or even completely healed at the time of the trial. It may, however, be important to show the progress of injury. This record can be maintained in black and white, but color speaks much more loudly. However, to be accurate in color, a photograph must be taken with great exactitude and steps should be taken by the photographer to establish the accuracy of his color rendition.

In preparing color photographs for court use there are two means of establishing their color accuracy. One is to secure a swatch of the photographed object to be brought into court for comparison with the photograph. If the colors in the pictured swatch match faithfully the colors of the actual swatch, color accuracy has been substantially achieved. Another method is to include in the objects photographed a 14″ gray-scale, showing ten gradations from white to black. On the scale, these gradations are sharp and distinct. If there is a separation of the gradations in the photograph, and the white end of the gray-scale comes out white and the black end is black, we then have a color photograph as accurate as the art will allow. This method of determining the accuracy of color rendition is regarded by technical workers in color photography as far superior in accuracy to the swatch method.

The main obstacle to color photography is its cost. Eight inch by ten inch prints cost from $3.50 to $50.00



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per print, depending upon the quality of the process used. In my judgment, the cheaper prints are actually inferior to good black and white prints. When the stakes are high, however, and faithful reproduction is required, there is no substitute for color. To keep costs under control, it is sometimes advisable to have color transparencies made, with 4″ x 5″ film, to be preserved until it is known that the case is going to trial, at which time the prints may be ordered. In the meantime, if advisable, the transparencies may be shown to opposing counsel—sometimes with excellent effect in bringing the case to a pretrial settlement.

What about motion pictures for court use? Generally, there is very little use for them unless motion or rate of motion are issues. Unless it is necessary to show a person running, walking, or working against a plea of invalidism, etc., there is little to be gained from motion pictures. Moreover, unless the picture is projected onto the screen at the precise rate at which it was taken, the rate of motion will not be the same as it was at the time of taking. Here it must be shown that the projector operates at the same speed as the taking camera if the rate of motion is to be valid.

It doesn't make much difference what kind of camera took a picture if the picture is a good one. The important thing is the lens. Poor lenses won't make sharp pictures. Even good lenses are in error somewhere, for the perfect lens has never been made. If the lens records in true perspective the object sought to be photographed within a reasonable degree of sharpness, the picture is a good one.

Ordinarily speaking, such distortion as occurs from lens error has no effect on the factual representation in the final picture. There is, however, one kind of distortion easily introduced by some types of cameras. It must be understood that the lens plane and the film plane should be centered and parallel. This condition is usually solidly fixed in the design and manufacture of most cameras. However, in the view-cameras, such as the Speed Graphics, Linhof Technikas and others, the photographer is free to vary these two relationships. In the usual photography, say of a tall building, taken from as close a position as possible, the parallel verticals seem, in the final print, to tend to meet each other. The appearance is entirely "distorted". Yet it has been proved repeatedly that the eye sees these parallels the same way as the camera, but the mind takes over and "corrects" this. In a camera with plane adjustments, these perspective parallels can be straightened out. The result is that they seem normal in the print when, in fact, they have been mechanically distorted! In addition, from a normal negative in an enlarger, this "corrective distortion" can be easily introduced into the final print by tilting the enlarging board. These techniques should never be re-

sorted to unless there is a good reason for them and a full disclosure is made by the offering party.

Today, the bulk of photographs offered in evidence are enlargements. That is, the film is smaller than the final print. Is there any harm in this? In my opinion, an enlargement made with the right kind of equipment is sharper than a contact print of the same size.

The enlarger also makes it possible to produce a better picture than the contact print when a scene is photographed under adverse conditions. A white building, in bright sunlight, bordered with trees and shade will record fairly well on the film. However, photographic printing papers do not have the range, or latitude, as it is called, to handle this problem. A so-called straight print—one that is made with a uniform amount of light cast upon the negative surface for transmission to the paper, will not record in detail the theoretical scene set out above. The white building, on the negative, is very dense. The shadow areas are very thin. Not enough light goes through the thick areas and too much goes through the thin areas, with the result that the print shows full black shadows and the white building appears without detail. By interposing the hand or other opaque material between the film and the paper to hold back the light coming through the thin areas of the negative, and thus to allow more light to pass through the thicker areas of the film, a balanced print can be achieved. This technique is known as "dodging". It is purely a mechanical problem introduced by the difference in sensitivity to light existing between film and paper. Should any objection arise as to this technique, the answer lies in the photographer being present in court with the negative from which the print was made. He will then be able to demonstrate that everything which is on the paper is on the film. The practice described, however, is so common in photographic work that to question its integrity can well be regarded as carping.

The essential questions (apart from the identifying, offering questions) to establish the validity of a picture can be asked in a minimum of questions, either on direct or cross-examination. I suggest the following:

1. (Black-and-white, color, motion.) When was the picture taken? (This question is particularly important to establish that nothing critical has been added or taken away from the scene in which the litigated episode occurred.)

2. (Black-and-white, color, motion.) What kind or make of camera was used? (In the case of still cameras, this leads the way to determine whether or not the lens plane and the film plane were centered and parallel; in the case of a poor lens, color registration is *not* accurate, and the color print will be far from accurate. In the case of a motion picture camera, this question opens up the taking speed

so that a determination can be made of the speed of the projector. Hence, this one question automatically suggests others, for the follow-through.)

3. (Black-and-white, color, motion.) What kind of film was used? (This question is of no importance if color tonal-values are not involved. If they are involved, then the answer must be "panchromatic" film if true proportional values as the eye sees them are to be established.)

4. (Black-and-white, color, motion.) Was a filter used? (Filters hold back certain wave-lengths of light, transmit others and, depending upon the film, create all sorts of different effects. Usually, in black-and-white prints, a filter shot can be detected if the sky appears dark and clouds are prominent.)

5. (Black-and-white, color.) Was there any re-touching done on the negative? (If there be any doubt on this point, ask that the negative be produced for critical examination.)

6. (Color.) How is color accuracy established? (This question to be asked in the case of color prints or transparencies, projected slides or motion pictures in color are used and when color or its intensity is at issue. It is well to remember that the duration of the exposure in color largely controls the color rendition, and the latitude between correct exposure and incorrect exposure is very slight. Failure to produce evidence of color-accuracy should open the picture to grave doubts.)

7. (Motion.) Can it be demonstrated that the speed at which a motion picture was taken is the precise speed at which it is intended to project it upon the screen? (To answer the question that the camera was set at 16 frames per second, for instance, and that the projector is set at 16 frames per second establishes nothing. Variations in the mechanical operation of both camera and projector usually exist and unless proper tests of both instruments have been made, then the rate of motion which will appear on the screen will not be accurate. This question is not important, of course, if the rate of motion is of no consequence.)

Of course, other questions can and should be asked. They suggest themselves. In the main, however, it seems to me that if opposing counsel can agree that a given picture represents that which it purports to represent, very little is gained in attempting a lengthy cross-examination to discredit it. On the other hand, if there is anything "fishy" about a picture, the few suggested questions above ought, to mix the metaphor, "smoke it out."

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The Professional Man's Plight

Reprinted from The Monthly Digest Of Tax Articles, June 1953

THE PROFESSIONAL man's lot is not a happy one, in an economic sense, to say the least. Take Lawyer Jones, a general practitioner. He's 45, has a wife, two minor children and a practice netting him $15,000, better than average for a lawyer, such as Jones. The next ten years will probably be his best and, due to his children growing up, also his most expensive.

Jones probably got out of law school about 1932, virtually the nadir of the Depression. By the time World War II started, he was just getting going, perhaps netting $5,000–$7,500. Military service, hardly remunerative, picked him up sometime in 1942 and turned him loose in 1946. Again he got going, but by the looks of his current earnings he did better than most. Maybe over the next ten years he can average $18,000. Then his earnings will start to decline, even as his clients die off. Jones and his wife have no other source of income.

Assuming present tax rates on an income averaging $18,000, Jones will pay the State and Federal Governments around $5,000 per year. The average will be closer to $6,000, because some of the next ten years will be higher than others. But let's say Jones ends up with $13,000 of disposable income. Let's also assume that the Joneses are more fortunate than many. They own their home free and clear and have $40,000 insurance on Jones' life.

If the Joneses are frugal, but still meet the reasonable educational requirements of their children, what can they save each year? $2,000? $3,000? Even $4,000? Take your choice. At 55, Jones may have $20,000–$40,000. Prudent investment may raise it to $60,000–$80,000. Good fortune, even $100,000.

What's Jones' picture at age 65? While his income has declined, so have his expenses. Maybe he can save another $20,000. With real luck he may have accumulated $150,000. So, for his declining years he can count on investment income of $2,000–$7,500. At his death, his wife may have to meet an estate tax bill of up to $20,000. Her income thereafter will be from $2,000 to $6,500. The Jones in the top bracket of this picture is probably the non-existent man. More likely he's in the bottom bracket. Debts, illness, etc., also take their toll. And Jones doesn't have to be a lawyer to play this role. He can be a doctor, dentist, accountant, etc. In short, the part can be played by any self-employed professional.

At old age, what's the future?

Picture of a man without tax worries

True, being marooned creates a few problems, but it has its compensations. For instance, how many of your clients would sigh enviously at this scene of a man thousands of miles from the nearest tax form?

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Small earnings. Little investment income. No Social Security. No pension or retirement income. And, even with small income, no old age assistance. The poor house won't take the Joneses. He is truly the forgotten man. Yet his average earnings for a period of ten years were $18,000. And the average from admission to the bar in 1932 until 65, about $8,000.

Presently Jones is forced to jury-rig his affairs so as to get some small retirement benefits. Maybe he can get one of his corporate clients to put him on its payroll, so Social Security, etc., may be available. Likewise with his wife. Instead of saving, he can buy insurance with annuity features. With the funds available, there's not a great deal he can do for himself.

However, the *Jenkins-Keogh* bill (H. R. 10 and H. R. 11), known as the "Individual Retirement Act of 1953", would be a great help to Jones. Under it, he's put in the corporate-executive class, with a real retirement program.

Were this bill, now pending in Congress, to pass, Jones could put $1,800 (10% of earned income) into a "restricted retirement fund" or purchase a "restricted retirement annuity." He can designate a beneficiary in case he dies. When he reaches age 65 or if he sooner becomes permanently or totally disabled he can take his annual contributions back in a lump sum, periodic payments, or in life annuity contracts. Or his insurance investment will start paying out. And Jones gets a tax reduction for the $1,800 he contributed each year, reducing his tax load about $700, further to increase his savings.

Trouble is, the bill ain't law yet. There's some talk that it's been pigeonholed. Professional groups are actively pushing it, however. Since many of you reading this will fit into Jones' shoes, why not lend a hand?

A Thoughtful Father

An aged father recently haled his five children into the Domestic Relations Court, alleging failure to properly provide for his support. Upon the hearing the following ensued:

"THE COURT: How much are your five children now contributing to your support?

"THE PETITIONER: Two hundred thirty-five dollars a month.

"THE COURT: How much do you think you should have?

"THE PETITIONER: I want three hundred a month.

"THE COURT: Why? Can't you get along on two hundred and thirty-five dollars a month?

"THE PETITIONER: Yes, Judge, I can get along.

"THE COURT: Then why do you ask for three hundred?

"THE PETITIONER: Because I want to save up enough money to leave to my children when I die!"—*The Brooklyn Barrister*

PROPERTY IN AIR

Reprinted from Weekly Law Bulletin, October 9, 1899

AN EXTREMELY delicate point in law, and one which will greatly interest bicycle riders, has just been brought up at Mansfield, Ohio. It appears that while wheeling about the suburbs, a bicyclist noticed that one of his tires was becoming soft. He explored his tool bag, but found that his pump was missing. It had been purloined by his wife, though this fact has nothing to do with the matter in hand. Fearing evil consequences for the tire, he turned in at a convenient repair shop and mentioned the difficulty.

The repair man immediately pumped up the tire, and the rider thanked him and was about to leave when the man demanded five cents. The wheelman explored his pockets, but discovered that he had either neglected to transfer his money to his bicycle garments, or that his money had gone in company with his pump—though this point, also, however interesting it may be to married men, has no bearing on the present case.

The bicycle owner explained the situation to the man, produced a visiting card and promised to step in the next morning with the money. The bicycle man replied, in effect, that he wasn't born yesterday; that there was much crime stalking abroad, and that he must insist on immediate settlement. The other made a reference to the notoriously anemic condition of a stone, and told the thrifty repairer that if he didn't choose to wait for his pay he could open the valve and take out the air which he had inserted, but that if he took more, even to the extent of one poor scruple, as Portia remarked to Shylock—nay, if the valve did hiss too much but in the estimation of a hair, he would have the law on him.

The bicycle man, more hardy than the Jew of Venice, with a remark that his deeds were upon his head, wrenched off the cap and punched the valve with a shingle nail. There was an ominous hiss. He punched again, but the valve refused to close. The air all escaped, and the cyclist, with observations which led the bystanders to believe that the quality of mercy was going to be badly strained, trundled his bicycle home.

The next day the matter was brought into court by the wheelman suing the repair man for damages. The repair man made a counter-claim for his five cents. Each had provided himself with learned counsel, and legal lore of considerable value transpired. Early in the proceedings the wheelman's lawyer set up the contention that there could be no property rights in air; that it existed, so to speak, ferae

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naturae, and therefore the bicycle man's claim of five cents could not lie.

Counsel for the repair man rose to point out what the intelligent court must already know, to-wit, that his learned opponent was an ass. That air in its native state, blowing where it listeth, is, of course, free to all, and can be lawfully seized of none; but that condensed air is a manufactured product as much as artificial ice or bricks, or the sheepskin diploma which in some inscrutable way his able opponent had become possessed of.

The court acquiesced in this view of the case.

Counsel for the rider said he bowed to the superior knowledge possessed by his scholarly opponent concerning wind, and asked leave to add ten cents to the claim of his client, estimating that there was merchantable atmosphere in the tire to that amount when his client entered the shop. Counsel for the repair man responded by giving notice that he should prosecute the plaintiff for obtaining goods under false pretenses, to-wit, five cents' worth of condensed air, when he knew, or ought to have known, that he had no money with which to pay for it.

Counsel for plaintiff said that no married man could know when his wife had been through his pockets, though no doubt the wife of his learned

"Hurry and give me a receipt for this speeding ticket. . . . I'm parked double!"

brother had given up the practice years ago, never having found anything.

The learned brother replied by admitting that when he put his hands in his pockets he was not usually rewarded by finding much cash, but so far he had managed to keep his hands out of other folks' pockets, a practice his esteemed opponent would do well to follow.

At this point the court rapped for order and announced the decision—five cents damages for plaintiff, and judgment for five cents for the defendant, the costs to be shared equally. Learned counselors collected $10 each from their respective clients and went away arm in arm; and the equal and exact justice before the law obtainable by all men was again vindicated.

All of which should furnish much food for thought to married men, bicycle riders and repair-shop proprietors.

What Is a Nuisance?

From England comes the story of how, at the conclusion of a nuisance case, the Judge summed up, and launched at great length into a definition of nuisance and the various elements that were required to prove it, until the jury became thoroughly tired of listening. When he had concluded he said: "Gentlemen, you may now retire to deliberate upon your verdict. I realize that this is not a simple case and that it will require much deliberation, but I hope you understand the various points I have submitted to you." Whereupon the Foreman replied: "Oh, yes, my Lord, we are all agreed that we never knew before what a nuisance was until we heard your Lordship's charge to the jury!"—*The Brooklyn Barrister*

Why Did He?

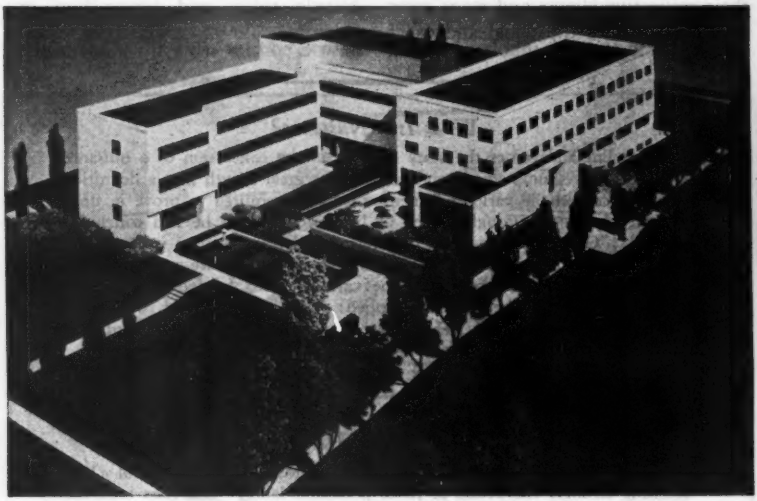
The judge spoke long and eloquently before the high school class, stressing strongly the virtue of hard, persistent labor. The class took the speech in good spirit tinged, no doubt, by a good bit of skepticism. The skepticism might have gone unexpressed, however, if one lanky youth had not raised a question when the talk was over. "How come, Judge—if hard labor's the pleasure you say it is—that you sent my uncle up for 30 days of it—for punishment?"—*Execs' Digest,* syndicated by Cambridge Associates, Boston.

AMERICAN BAR ASSOCIATION SECTION

The publishers of Case and Comment donate this space to the American Bar Association to permit it to bring to our readers matters which the Association deems to be of interest and practical help to the general practitioner.

CONTRACTS have been let and ground has been broken for the new American Bar Center in Chicago. The three-story structure on the Midway, on ground contributed by the University of Chicago, will house the headquarters of the American Bar Association and a number of its affiliated organizations and also will provide the first national center for legal research in America. It is expected that the building will be completed in time for dedication at the 1954 annual meeting of the American Bar Association in Chicago.

Considerably more than half of the



Model of American Bar Center soon to be built in Chicago. It will house headquarters of American Bar Association and provide facilities for legal research, and a national clearinghouse relating to such studies. Lawyers throughout the country are being asked to contribute $1,500,000 toward the new building on Chicago's Midway.

money necessary to build the American Bar Center is in hand. This includes donations prior to the present campaign for $1,500,000, which is being sought from lawyers all over the United States. By the time of the Diamond Jubilee Meeting of the American Bar Association in Boston, the Finance Committee of the American Bar Foundation, headed by George Maurice Morris of Washington, D. C., is confident that the halfway mark in the $1,500,000 will be in sight.

The campaign for funds is being conducted on a state and local basis. It is, therefore, a series of local campaigns rather than one national campaign, although it is being serviced from headquarters in Chicago. Several states already are close to the 100 per cent mark in their quotas. Among the leaders are Delaware, Indiana, New York, Missouri, and Montana. Many counties in these and other states have exceeded the quotas that were set for them on the basis of a mathematical formula, and such cities as Dallas, Texas; Dayton, Ohio; Memphis, Tennessee; Indianapolis, Indiana; Kansas City, Missouri; and Syracuse, New York; have gone over the top.

Mr. Morris has recently pointed out that lawyers have been most generous in their response to this appeal for a center for the legal profession that is in keeping with the importance and dignity of that profession. Wherever campaign leaders have been able to get off to an early start and do a thorough job of canvassing the lawyers in their

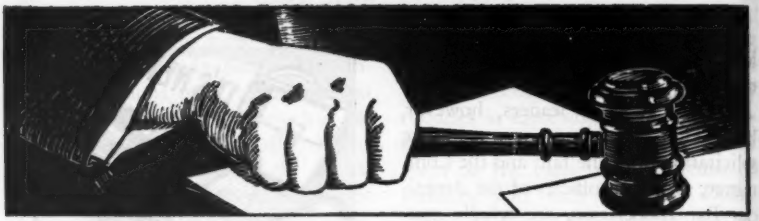
"I'll Demand a Ballistics Test!"

localities, the quota has been met or exceeded.

Many campaign leaders, however, have elected to postpone complete solicitation until the fall; and the Committee, as well as officers of the American Bar Association, are wholly confident that the entire goal of $1,500,000 will be reached just as soon as all the lawyers in the country are asked to give.

The Committee has been especially pleased at the response of nonmembers of the American Bar Association to this appeal for funds. Many nonmembers have stated that, while they have not had the time to devote themselves to American Bar Association activities, they nevertheless feel that this center is definitely needed to represent the entire profession in the United States.

In the Diamond Jubilee Meeting in Boston the American Bar Center will receive considerable attention. Most prominent among the exhibits concerning the Center will be the first public exhibition of the "Standing of the States" in the campaign. Each state will be listed on a prominent display showing the percentage of its goal obtained up to the time of the meeting. Opportunity will be afforded for those who have not contributed to make their donations at the Boston meeting, although there will be no downright solicitation of funds at this meeting.



Among the New Decisions

Amusement Patron — *liability for assault on.* Damages for injuries received as the result of an assault upon a theater patron by another patron were sought in Rawson v. Massachusetts Operating Co., — Mass —, 105 NE2d 220, 29 ALR2d 907, an action by the former against the theater operator. It appeared in evidence, among other circumstances, that young patrons had been creating disturbances for a long period of time, that the defendant did nothing to stop their rowdy acts, that other patrons attempted to quiet them; and that the plaintiff was struck when he remonstrated with one of them.

A verdict entered by the court for the defendant under leave reserved, notwithstanding the jury's verdict for the plaintiff, was set aside by the Supreme Judicial Court of Massachusetts. The opinion by Justice Wilkins, held that the defendant was under a duty to use reasonable care to prevent the injury, and that the evidence was sufficient to sustain the jury's verdict.

The "Liability of owner or operator of theater or other amusement for assault on patron by another patron" is discussed in the appended annotation in 29 ALR2d 911.

Animal or Livestock Insurance — *risks and losses covered.* Abraham v. Insurance Company, 117 Vt 75, 84 A2d 670, 29 ALR2d 783, was an action by the insured against an insurer seeking recovery under a policy of insurance on a horse. The policy covered "Destruction, in the case of incurable illness or injury . . . , provided that a written certificate from a qualified veterinarian . . . is first obtained certifying that such destruction is necessary in order to immediately relieve incurable suffering." The horse was destroyed upon advice of a veterinarian whose certificate stated that the horse was incurably blind in both eyes, but was not suffering acute pain, and in effect negatived the necessity of "immediate" destruction.

A judgment for plaintiff was reversed by the Supreme Court of Vermont. The opinion by Justice Adams, though recognizing the rule of construction of ambiguous terminology in a policy in favor of the insured, regarded the key words "necessary,"

"immediately," and "suffering" as unambiguous, and as requiring, for coverage, a conscious pain so acute as indispensably demanding action without delay in order to put the animal out of its misery.

The appended annotation in 29 ALR2d 790 discusses "Animal or livestock insurance: risks and losses covered."

Anti-injunction Statutes — *action by governmental agency.* In Board of Education v. Union Local No. 63, 233 Minn 144, 45 NW2d 797, 29 ALR2d 424, an injunction against a threatened strike by its janitors and janitor-engineers was by a board of education. The complaint incorporated a strike notice stating a strike vote to have been taken because of inaction of the plaintiff notwithstanding requests for an increase in wages. Injunctions in cases involving labor disputes were restricted by a state statute which defined a labor dispute as including any controversy concerning terms of employment. The statute expressly excepted from its operation policemen, firemen, and other public officials charged with duties relating to public safety.

Denial of a temporary injunction pending determination of the action was affirmed by the Supreme Court of Minnesota. The opinion by Justice Magney, held that a labor dispute was shown by the complaint to be involved in the action, that the statutory exception as to public officials charged with public safety duties indicated an intention not to except other public officers or employees from its operation, that janitors and janitor-engineers were not charged with public safety duties within the meaning of the statute, and that the action which was not brought in compliance with the statute was not within the court's jurisdiction.

The appended annotation in 29 ALR 2d 431 discusses "Applicability of Norris-LaGuardia Act and similar state statutes to injunction action by governmental unit or agency."

Anti-injunction Statutes — *action by private complainant.* An injunction against picketing and similar activities was sought in Outdoor Sports Corp. v. American Federation of Labor, Local 23132, 6 NJ 217, 78 A2d 69, 29 ALR2d 313, against a union and others by a promoter of automobile races. By the picketing and related activities, the union sought to force the promoter to accept entries only from members of an automobile racing association represented by the union, the running of the race and distribution of prize money according to union rules, and recognition of the union as bargaining agent for the race participants. The promoter was operating under a contract, with other associations of automobile racers, providing for acceptance of entries only from persons licensed or approved by them. The only compensations received by the race participants were shares in the prize money established for each race by the promoter, the amount of which shares varied with their success in the race.

The New Jersey labor dispute anti-injunction statute provided, inter alia, that "a case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in industry, trade, craft, employment, or occupation . . . regardless of whether or not the disputants stand in the proximate relation of employer and employee."

The grant of an interlocutory injunction was approved by the Supreme Court of New Jersey in an opinion by Justice Oliphant. It was held that the statute is available to disputants engaged in the industry, trade, craft, or occupation in which the dispute occurs, although all of them do not stand in the proximate relationship of employer and employee one to the other, or although the disputants are employees of independent contractors or customers, or persons connected with the primary disputants because of a unity of interest in the terms and conditions of employment; but that the statute is not applicable in the absence of a basic relationship of employer and employee and a dispute concerning terms and conditions of such employment; and that the race participants are not to be regarded as employees of the promoter merely because the latter may make a profit from the operation.

The "Applicability of Norris-La Guardia Act and similar state statutes to injunction action by private complainant" is discussed in the extensive appended annotation in 29 ALR2d 323.

Argument of Counsel — *prejudicial effect.* Recovery of damages for personal injuries alleged to have been caused by a defective and inoperative hand brake on defendant's railroad car was sought by a switchman in Missouri-Kansas-Texas Railroad Co. v. Ridgway, 191 F2d 363, 29 ALR2d 984. The equipment of railroad cars with "efficient hand brakes" was expressly required by the Federal Safety Appliance Act. Plaintiff introduced evidence to show that the accident resulted from a brake chain too long to be effective. In his argument to the jury, plaintiff's counsel made remarks conveying the impression that the opposing party and counsel had attempted to suppress this fact, and denounced the defendant for inflicting plaintiff's serious injuries. Objections to the remarks were overruled by the trial court, which did not instruct the jury to disregard them.

Judgment on a verdict for $98,800 was reversed by the Eighth Circuit, in an opinion by Chief Justice Gardner. It was held that a railroad is liable for injuries resulting to an employee from a failure to comply with the Safety Appliance Act regardless of the exercise of reasonable care in maintaining the appliance, and that direction of a verdict for defendant was therefore properly refused, but that counsel's appeal to passion and prejudice in his remarks to the jury upon matters not within the issues and not supported by the record constituted error sufficient for the reversal of the judgment on a

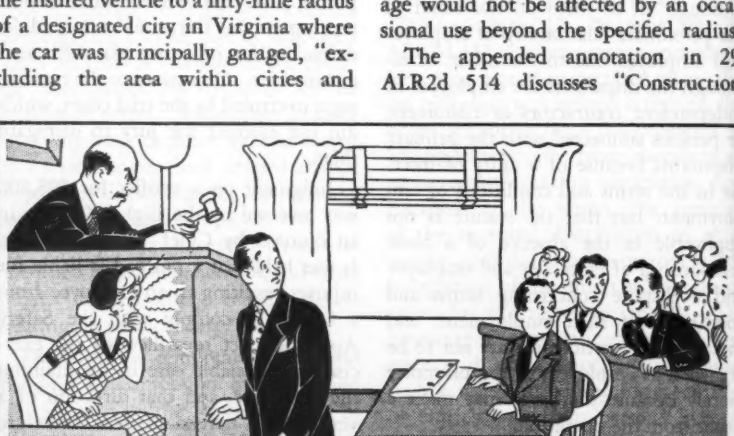
verdict regarded by the court as so excessive as to shock the conscience.

The appended annotation in 29 ALR 2d 996, entitled "Prejudicial effect of argument or remark that adversary was attempting to suppress facts," supersedes an earlier annotation on the subject.

Automobile Insurance — *area of use.* Recovery under an automobile liability insurance policy was sought in Johnson v. New Amsterdam Casualty Co., 234 NC 25, 65 SE2d 347, 29 ALR2d 507, an action against the insurer. The policy contained an indorsement confining customary use of the insured vehicle to a fifty-mile radius of a designated city in Virginia where the car was principally garaged, "excluding the area within cities and towns designated herein . . . . Cities and towns excluded: State of North Carolina." The accident occurred in a rural area of North Carolina within the fifty-mile radius.

Judgment for plaintiff was affirmed by the Supreme Court of North Carolina. The opinion, by Justice Denny, applying the rule of strict construction against the insurer, who prepared the policy, held that only cities and towns in North Carolina, and not rural districts within the fifty-mile radius, were excluded from the confined area of coverage; and that, even if all of North Carolina were excluded from the confined area of customary use, the coverage would not be affected by an occasional use beyond the specified radius.

The appended annotation in 29 ALR2d 514 discusses "Construction



"Will that wiseacre ventriloquist please leave the courtroom?"

and effect of clause in liability policy voiding policy while insured vehicles are being used more than a specified distance from principal garage."

Automobile Registration or Operator's License — *lack of, as evidence of negligence.* Recovery of damages for personal injuries sustained in a collision of automobiles was sought in Wysock v. Borchers Bros., 104 Cal App2d 571, 232 P2d 531, 29 ALR2d 948, an action by the driver of one car against the owners of the other car and its driver, their employee. Defendants' motion to strike evidence of nonpossession by defendant-driver of a chauffeur's or operator's license was denied. Employment of a driver under circumstances charging knowledge of his incompetence was not, under the pleadings, in issue.

Judgment on a verdict for the plaintiff was reversed by the California District Court of Appeal, First District, Division 1, in an opinion by Justice Fred B. Wood. It was held that the evidence of nonpossession of the license was not admissible on the issues of defendant-driver's negligence and proximate cause of the injuries; that, in view of the nearly balanced conflicting testimony, such error was prejudicial; and that the error was not waived by the defendants' introduction of evidence as to defendant-driver's experience as a driver and his delay in obtaining a license, or cured by the instruction to the jury that nonpossession of the license was immaterial unless there was some causal relationship between the nonpossession and the injuries.

The "Lack of proper automobile registration or operators' license as evidence of operator's negligence" is discussed in the appended annotation in 29 ALR2d 963.

Automobiles — *sudden or unsignaled stop.* Damages for personal injuries sustained in a collision of automobiles were sought in Dippert v. Sohl, — SD —, 51 NW2d 699, 29 ALR2d 1. It appeared in evidence that plaintiff was a passenger in a car which was driven by her husband and which crashed into the car driven by defendant, when the latter stopped on the highway. The husband testified that he was unable to stop because of the icy condition of the highway.

Judgment on a verdict directed against plaintiff was reversed by the Supreme Court of South Dakota. The opinion by Justice Rudolph, held that the defendant could be found, under the evidence when viewed in a light most favorable to plaintiff, to have stopped without complying with a statute requiring a signal and a determina-

tion that the stop could be made in safety; that such violation constituted negligence; that, even if the husband's conduct constituted negligence, it could not be imputed to the wife; and that the negligence of the defendant and the husband could properly be found to be concurring proximate causes of the injury.

The extensive appended annotation in 29 ALR2d 5 discusses "Sudden or unsignaled stop or slowing of motor vehicle as negligence."

"Bad Check" Statute — *postdated checks.* State v. Eikelberger, 72 Idaho 245, 239 P2d 1069, 29 ALR2d 1176, was a criminal action in which the defendant was charged with violation of statute by issuing a check without sufficient funds or credit and with intent to defraud. The evidence was in conflict on the question, assuming that the check was postdated, whether the postdating was called to the attention of the payee with a request and promise to hold it for a few days.

A judgment of conviction entered upon the jury's verdict was affirmed by the Supreme Court of Idaho, in an opinion by Justice Thomas. It was held that the statute may be violated by the issuance of a postdated check without calling the attention of the payee to the postdating and without making arrangements for the payee's withholding of presentation for payment; that the conflicts in the evidence were exclusively within the province of the jury to resolve; and that its findings against the defendant were sufficiently supported by the evidence.

The appended annotation in 29 ALR 2d 1181, entitled "Construction and effect of 'bad check' statute with respect to postdated checks," supersedes portions of earlier annotations discussing the subject.

Criminal Law — *indeterminate sentence.* A sentence with both minimum and maximum terms fixed at life imprisonment, imposed for armed robbery, was reversed in People v. Westbrook, 411 Ill 301, 103 NE2d 494, 29 ALR2d 1341, by the Supreme Court of Illinois which, in an opinion by Justice Schaefer, held the sentence invalid under the indeterminate sentence law.

The appended annotation in 29 ALR2d 1344 discusses "Validity, under indeterminate sentence law, of sentence fixing identical minimum and maximum terms of imprisonment."

Death Action — *compromise or settlement of.* Recovery of damages for wrongful death was sought in National Valve & Manufacturing Co. v. Wright, 205 Okla 571, 240 P2d 766, 29 ALR2d 1448, by the decedent's administrator. Without the knowledge and consent of the administrator, the action was compromised and settled by the administrator's attorneys and the decedent's widow with the concurrence of the other beneficiaries, and a judgment was entered pursuant thereto.

Vacation of the judgment after the term of its rendition upon motion of the administrator was affirmed by the

Supreme Court of Oklahoma, in an opinion by Justice Bingaman. It was held that neither the beneficiaries nor the attorneys had authority to compromise and settle the action without the knowledge and consent of the administrator, and that rendition of the judgment upon the assumption of the administrator's consent to the compromise and settlement constituted an irregularity sufficient for vacation of the judgment.

The "Compromise or settlement by statutory beneficiaries without assent of personal representative of death action commenced by latter" is discussed in the appended annotation in 29 ALR2d 1452.

Divorce — *failure to follow husband as desertion or abandonment.* An absolute divorce and custody of minor children were sought in Bennett v. Bennett, — Md —, 79 A2d 513, 29 ALR2d 467, by the husband on the ground of alleged abandonment by the wife. The abandonment relied upon consisted of a refusal by the wife to move to a new place of abode established by the husband.

Denial of the divorce and award of custody of the children to the defendant were approved by the Court of Appeals of Maryland, in an opinion by Justice Delaplaine. It was held that a wife is not guilty of abandonment in refusing to follow her husband to a new place of abode selected by him unless he requests her to do so in good faith and the change would not impair her health or safety, or unreasonably interfere with her comfort; and that the chancellor's finding of the inadequacy of the new home for the family and of the husband's purchase thereof with the ulterior motive of using the refusal as a ground for divorce was supported by the evidence.

The title of the appended annotation in 29 ALR2d 474 is "Wife's failure to follow husband to new domicile as constituting desertion or abandonment as ground for divorce."

Divorce — *habitual intemperance, etc., as ground.* In Todd v. Todd (Fla) 56 So2d 441, 29 ALR2d 920, a divorce was sought by the plaintiff-husband on the ground of the wife's habitual intemperance, and by the defendant-wife on the ground of the husband's extreme cruelty. It appeared in evidence that the husband kept the home constantly well supplied with intoxicating liquor and frequently attended social gatherings with his wife at which both drank, and that the wife got drunk at times, but it did not appear that she was ever treated for alcoholism or was a confirmed alcoholic. It also appeared, among other circumstances, that the husband slapped and beat the wife, dragged her over the floor by the hair, and repeatedly charged her with adultery without any evidence thereof.

A decree granting the husband a divorce was reversed by the Supreme Court of Florida, Division A. The opinion by Justice Terrell, ruling that habitual but moderate use of intoxicating liquors does not constitute

habitual intemperance as ground for divorce, held that the evidence was insufficient to support the finding of the wife's habitual intemperance; that, in any event, the husband was precluded from seeking a divorce on such ground by his acts of encouraging social drinking and keeping the wife in a liquor environment; and that the wife's allegations of extreme cruelty were amply supported by the evidence.

The appended annotation in 29 ALR 2d 925, entitled "What amounts to habitual intemperance, drunkenness, and the like within statute relating to substantive grounds for divorce," supplements an earlier annotation on the same subject.

False Arrest or Imprisonment — *private person assisting officer.* Recovery of damages for false arrest and false imprisonment was sought in Moyer v. Meier, 205 Okla 405, 238 P2d 338, 29 ALR2d 818, against one who was summoned by an officer to assist in making the arrest and effecting the imprisonment. By statute, refusal to aid the officer constituted a misdemeanor. It appeared in evidence that the defendant did not act wantonly or beyond what he was required by the officer to do, and did not procure the officer to do anything.

Judgment on a verdict for the plaintiff was reversed by the Supreme Court of Oklahoma, which held that liability could not be predicated upon the circumstances above set forth, and that defendant's motion for a directed verdict should have been granted.

"Of course I have grounds for divorce, Your Honor. . . . My husband!

The appended annotation in 29 ALR 2d 825 discusses civil liability, for false imprisonment or arrest, of a private person answering the call of a known or asserted peace or police officer to assist in making an arrest which turns out to be unlawful.

Health or Accident Insurance — *confinement to house.* Recovery under a house confinement clause of a health and accident insurance policy was sought in MacFarlane v. Pacific Mutual Life Insurance Co., 192 F2d 193, 29 ALR2d 1403, by one suffering paralysis of both legs as the result of poliomyelitis. It appeared that the insured was unable to leave his home without artificial aids or the help of others, but that, by means of walking sticks, a wheel chair, and a specially equipped automobile, he was able to leave his home and make various trips visiting, among others, his doctor.

A judgment denying recovery under the house confinement clause was affirmed by the Seventh Circuit. The opinion, by Chief Justice Major, applying the law of Wisconsin, held that the insured failed to qualify under the house confinement clause requiring that the insured be "necessarily, strictly and continuously confined within the house," and that he be "therein regularly visited and attended by a legally qualified physician."

The appended annotation in 29 ALR2d 1408 discusses the question of "When is one confined to house within meaning of health or accident insurance policy."

Highway Contractors — *duty to provide detour.* Recovery of damages for personal injuries, sustained by falling into a hole at night in an unlighted street detour, was sought in Nester v. United Foundation Corp., — W Va —, 67 SE2d 533, 29 ALR2d 871, an action against a town and a contractor. The contractor had obstructed the street in the course of construction work being done with the municipality's permission. It did not appear from the petition that the detour was constructed or maintained by the contractor, or that he was under a contractual duty to do so.

Overruling of the contractor's demurrer to the declaration was reversed by the Supreme Court of Appeals of West Virginia, in an opinion by Justice Given. It was held that the contractor was not under a duty to provide or maintain the detour in the absence of the imposition of such duty by contract or special circumstances.

The appended annotation in 29 ALR 2d 876 discusses the duty and liability of a highway construction contractor to provide or maintain a temporary way or detour across or around an obstruction in a street or highway.

Insanity of Accused — *as ground for habeas corpus or coram nobis.* Release from confinement under a sentence entered upon a plea of guilty in a prosecution for grand larceny was sought in Fisher v. Fraser, 171 Kan 472, 233 P2d 1066, 29 ALR2d 699, a habeas corpus proceeding, on the ground that, at the time of the com-

mission of the offense, the accused was under an adjudication of insanity and commitment to the state hospital for the dangerous insane.

The Supreme Court of Kansas, in an opinion by Justice Parker, denied the writ and held that the defense of insanity at the time of the alleged commission of an offense must be asserted, presented, and determined during the trial of the case and is not available in a habeas corpus proceeding.

The appended annotation in 29 ALR 2d 703 discusses "Insanity of accused at time of commission of offense, not raised at trial, as ground for habeas corpus or coram nobis after conviction."

Insurance —*contractual limitation, waiver of.* Recovery under a policy of windstorm insurance was sought in Brocato v. Sun Underwriters Insurance Co., 219 La 495, 53 So2d 246, 29 ALR2d 629. Lapse of the period of limitations provided by the policy was asserted by the insurer as a defense. It appeared that the parties had been engaged in prolonged negotiations during which the insurer made admissions of liability and, from time to time, made progressively larger offers of settlement, one of which was made after the lapse of the contractual limitation period.

A judgment dismissing the action was reversed by the Supreme Court of Louisiana, which, in an opinion by Justice Le Blanc, held that although the mere admission of liability did not constitute a waiver of the limitation provision, such provision was waived by the admission coupled with the other factors inducing the insured to believe that his claim would be settled without suit.

An "Insurer's admission of liability, offers of settlement, negotiations, and the like, as waiver of, or estoppel to assert, contractual limitation provision" is discussed in the extensive appended annotation in 29 ALR2d 636.

Insurance — *election to replace, time of.* The value of an automobile before damage thereto by collision was sought in Dosland v. Preferred Risk Mutual Insurance Co., 242 Iowa 1220, 49 NW2d 823, 29 ALR2d 712, an action by the insured against the insurer. By the terms of the policy, the insurer was given an option to pay for the loss, repair the automobile, or take the automobile at the agreed or appraised value. Possession of the automobile was taken by the insurer, which, however, made no suggestion of its election to repair the car for about three months and no tender of the repaired car until the expiration of four months, and had not even fully repaired the car at the time of the trial more than a year after the collision.

Judgment on a verdict for plaintiff for the value of the car before the collision was affirmed by the Supreme Court of Iowa. The opinion by Chief Justice Oliver held that, in the absence of a specification of time by the policy, the election to repair must be made within a reasonable time; that the question whether the election was made

within a reasonable time depends on the circumstances of each case; that, in cases where the delay is not clearly reasonable or unreasonable, the question is one of fact for the jury; and that, under the circumstances of the principal case, the trial court did not err in overruling defendant's motion for a directed verdict.

The time within which an insurer must make its election to rebuild, repair, or replace insured property, whether the policy contains an option with a time limit or not is discussed in the appended annotation in 29 ALR2d 720.

Insurance — *limitations, action to recover unearned premium.* In P. & E. Finance Co. v. Globe & Republic Insurance Co., 205 Okla 627, 239 P2d 1009, 29 ALR2d 933, recovery of unearned premiums, upon cancelation by the insurer of certain motor vehicle fire, theft, and collision policies, was sought by the holder of mortgages on the vehicles. The insurance had been effected pursuant to clauses of the mortgages permitting the mortgagee, upon failure of the mortgagors to do so, to take out the insurance and charge the amount paid for premiums to the mortgagors' accounts. The action was not commenced within the time stipulated by a statute of limitations applicable to actions for recovery of benefits under insurance policies.

A dismissal of the case upon sustaining a demurrer to the petition was reversed by the Supreme Court of Oklahoma which, in an opinion by Justice

"For Heaven's sake, Miss Dworkin, we can't have files missing, too."

O'Neal, held that the mortgagee was a real party in interest entitled to maintain the action in his own name, and that the action was governed by the general statute of limitations applicable to actions for money had and received.

The appended annotation in 29 ALR2d 938 discusses "Limitations governing action to recover unearned premium retained by insurer upon cancelation of policy."

Insurance Broker or Agent — *liability.* In Roberts v. Sunnen, 38 Wash 2d 370, 229 P2d 542, 29 ALR2d 165, recovery of sums advanced in payment of insurance premiums was sought by an insurance agent against the insured, who cross-complained for damages for failure of the plaintiff to secure the cheapest and best insurance for defendant's operations. The insured operated an automobile freight business, and the cross complaint was based upon the failure of plaintiff, over a period of years, to secure incorporation in the property damage liability policies of a $100-deductible provision which, after such period, the insured secured at a considerable saving in premiums.

Dismissal of the cross complaint and direction of a verdict for plaintiff were approved by the Supreme Court of Washington, Department 2. The opinion by Justice Hamley, ruling that the plaintiff was under a duty to exercise good faith, reasonable skill, and ordinary diligence to secure the insurance on the best terms obtainable, held that the cross complaint was properly dismissed in view of the plaintiff's uncontradicted evidence of the unavailability of the $100-deductible provision during the period involved, and that, since there was no dispute in the evidence as to the balance due, a verdict was properly directed for the plaintiff.

The appended annotation in 29 ALR 2d 171, entitled "Duty and liability of insurance broker or agent to insured with respect to procurement, continuance, terms, and coverage of insurance policies," supersedes an earlier annotation on the point.

Lease — *assignee's right to renew.* Recovery of possession of leased premises was sought in Nigro v. Don-Mar Corp., 369 Pa 35, 85 A2d 21, 29 ALR 2d 834, an action of ejectment by the landlord against an assignee of an assignee of the original lessee. The original assignment was made with the written approval of the landlord who, after the second assignment, accepted rents from the second assignee. The lease was for a period of five years and gave the lessee a right to renew for a further five-year period, which right was exercised by the second assignee by giving requisite and timely notice.

A judgment on the pleadings for defendant was affirmed by the Supreme Court of Pennsylvania which, in an opinion by Justice Ladner, held that the covenant to renew ran with the land and was available to the defendant, and that the statute of frauds did not invalidate an assignment signed only by the assignor, and not by the assignee.

An "Assignee's right to enforce lessor's covenant to renew or extend lease" is discussed in the appended annotation in 29 ALR2d 837.

New Trial — *as to damages only.* Recovery of damages for injuries sustained in a collision of automobiles was sought in Leipert v. Honold, 39 Cal2d 462, 247 P2d 324, 29 ALR2d 1185, an action against the driver and owners of one of the cars. The record showed a considerable length of time required by the jury to reach its verdict, the solicitation by the jury of information from the court on the issue of negligence, and uncontradicted evidence relating to the nature and extent of plaintiff's injuries.

An order granting, because of the inadequacy of the damages awarded, a new trial limited to the issue of damages was reversed by the Supreme Court of California, in Bank, in an opinion by Justice Traynor. It was held that the limitation of a new trial to the issue of damages rests in the discretion of the trial court, but that the record showed so strongly that the inadequate verdict was a compromise on the close issue of liability that the grant of the limited new trial constituted an abuse of discretion.

The appended annotation in 29 ALR 2d 1199, entitled "Propriety of limiting to issue of damages alone new trial granted on ground of inadequacy of damages awarded," supersedes an earlier annotation on the same subject.

Old Age Assistance — *reimbursement.* Reimbursement for old-age assistance payments were sought in Boston v. McCafferty, — Mass —, 102 NE2d 415, 29 ALR2d 728, an action by a city against a recipient who subsequently inherited funds. A judgment limiting recovery to payments made subsequently to receipt of the legacy was reversed by the Supreme Judicial Court of Massachusetts, which, in an opinion by Justice Ronan, held that the statute was enacted to change the existing law, so as to authorize recovery of payments made before, as well as after, receipt of the legacy.

The appended annotation in 29 ALR 2d 731, entitled "Reimbursement of public for financial assistance to aged persons," supersedes an earlier annotation on the point.

Parked Automobile — *pulling out.* Damages for personal injuries sustained by a pedestrian in an automobile accident were sought in McBride v. Woods, 124 Colo 384, 238 P2d 183, 29 ALR2d 101, an action against the driver. At the time of the accident, which occurred in broad daylight, the plaintiff was crossing at a street intersection and was struck by the car of defendant, who, without sounding a warning, backed his car across the crosswalk from his diagonally parked position at the curb. The pedestrian, walking away from the car, did not see it; and the driver, whose vision was obscured by solid construction in back of the car, did not see the pedestrian.

Judgment on a verdict for defendant was reversed by the Supreme Court of Colorado, which held, in an opinion by Justice Moore, that backing the car across the crosswalk was an exceedingly hazardous maneuver requiring a degree of vigilance commensurate with the hazard, and that the evidence did not justify the trial court's submission to the jury of the question of unavoidable accident.

"Liability for injury or damage growing out of pulling out of parked motor vehicle" is discussed in the extensive appended annotation in 29 ALR2d 107.

Parking Places — *regulation and licensing.* State v. United Parking Stations, 235 Minn 147, 50 NW2d 50, 29 ALR2d 852, was a criminal action charging violation of a municipal ordinance requiring the posting of rates at the entrance and exits of open-air motor vehicle parking lots. It appeared that the rates were posted on a shanty 140 feet from one entrance and 30 feet from another, and were communicated orally to motorists after entry upon the lot.

A judgment of conviction was affirmed by the Supreme Court of Minnesota, which, in an opinion by Justice Christianson, held that the ordinance was not an unreasonable exercise of the police power or a violation of the constitutional due process clauses, and that defendant's acts were not a substantial compliance with the ordinance

"I can't pay very much of a fee, but I do think my case would present you with some fascinating legal problems."

so as to render its enforcement under the circumstances arbitrary and capricious.

The appended annotation in 29 ALR 2d 856, discussing "Regulation and licensing of privately owned parking places," supersedes an earlier annotation on the subject.

Parole, Pardon or Probation — *revocation of.* In Ex parte Anderson, 191 Or 409, 229 P2d 633, 230 P2d 770, 29 ALR2d 1051, release of one imprisoned upon revocation of his parole was sought by corpus petition upon the ground that the parole board revoked the parole without notice or hearing. No allegation or proof was made to charge that the board acted fraudulently, corruptly, capriciously, or in the absence of any information respecting violation of the parole conditions. A statute authorized the board, at its "discretion," to have the parolee retaken into confinement if the board, upon exercise of its authority to "determine" whether a violation of the parole has occurred, "finds" such violation.

A judgment denying release of the prisoner was affirmed by the Supreme Court of Oregon, en Banc, in an opinion by Chief Justice Brand, which held that the parole board was empowered to act upon the information received from its various reports and investigations, and that the prisoner had neither a constitutional nor a statutory right to notice and hearing prior to revocation of his parole.

The extensive appended annotation in 29 ALR2d 1074, entitled "Right to notice and hearing before revocation of suspension of sentence, parole, conditional pardon, or probation," supersedes earlier annotations on the subject.

Proximate Cause — *injury occasioned by dazed condition.* Damages for personal injuries sustained in an automobile accident were sought in Hall v. Coble Dairies, 234 NC 206, 67 SE2d 63, 29 ALR2d 682. The complaint alleged defendants' violation of a statute in parking a disabled trailer on the paved portion of a highway without lights, flares, or signals, collision therewith by plaintiff while driving his car in a careful manner, and personal injuries sustained by plaintiff when he alighted from his car in a dazed condition and was struck by a car traveling in the opposite direction.

The sustaining of a demurrer to the complaint was disapproved by the Supreme Court of North Carolina, in an opinion by Justice Johnson. It was held that the test of foreseen or foreseeable consequences is applicable in North Carolina in determining proximate cause or actionable negligence; that, under such test, it is not necessary to foresee the injury in the precise form in which it occurs, but that the foreseeability of some similar injurious result is sufficient; and that the complaint averred no independent, intervening cause sufficient to isolate defendants' alleged acts of negligence from the personal injuries sustained.

"Negligence causing dazed or stunned condition as proximate cause of injuries occasioned by such condi-

tion" is the subject of the appended annotation in 29 ALR2d 690.

Subterranean Waters — *obstruction or diversion of.* Recovery of damages for destruction of plaintiffs' spring was sought in Labruzzo v. Atlantic Dredging & Construction Co. (Fla) 54 So2d 673, 29 ALR2d 1346, against a neighboring landowner which, by excavations for the construction of a yacht basin on its land, interfered with a subterranean stream feeding the spring. The first count of the declaration averred defendant's knowledge that the area was largely underlaid by a water-bearing stratum commonly pierced with underground caverns and watercourses, but did not aver knowledge that the subterranean stream feeding plaintiffs' spring came through defendant's lands. The second count

averred, among other circumstances, that the defendant had located and identified the underground channel feeding the plaintiffs' spring before permanent damage thereto, and had thereafter proceeded with its excavation and pumping activities so as to cause a complete and permanent diversion of the water from its natural channel.

A judgment entered upon sustaining demurrer to the declaration was reversed by the Supreme Court of Florida, Division B, in an opinion by Justice Roberts. It was held that the defendant, by his proprietary use of his land incidentally affecting subterranean waters, would be liable to plaintiffs for (1) an intentional invasion by conduct unreasonable under the circumstances of the particular case, or (2) an unintentional invasion by negligent, reckless, or ultrahazardous conduct; and that the first count of the declaration stating a cause of action, if at all, for an unintentional invasion of water rights, did not sufficiently show actionable negligence; but that the second count stated a cause of action for an intentional invasion of water rights, subjecting the defendant to liability if its conduct was unreasonable under the circumstances, a question for determination by the jury under appropriate instructions.

The "Liability for obstruction or diversion of subterranean waters in use of land" is discussed in the extensive appended annotation in 29 ALR2d 1354.

"Watch 639407. . . . He's been saying good-bye to all his friends."

Trust Assets — *consent to improper allocation of.* Construction of a will providing for a testamentary trust, apportionment of funds as between corpus and income, and an accounting were sought in Scullin v. Clark (Mo) 242 SW2d 542, 29 ALR2d 1024, an action by a personal representative of a beneficiary entitled to one-fourth of the net income for life. Though entertaining doubts as to the propriety thereof, the beneficiary, before his death, approved and acquiesced in the allocation of the funds to the corpus and, in his capacity as cotrustee, concurred in such action.

Dismissal of the petition was approved by the Supreme Court of Missouri, Division No. 1, which, adopting an opinion by Commissioner Lozier, held that the plaintiff could not claim the beneficiary's ignorance of facts known to him in his capacity of a cotrustee, or ignorance of legal rights where he was aware of his right to assert a claim and have the matter judicially determined; and that the plaintiff was therefore precluded by the rule that a sui juris beneficiary may not complain of a breach of trust consented to or confirmed and ratified by him with full knowledge of the facts and of his legal rights.

The subject of the appended annotation in 29 ALR2d 1034 is "Beneficiary's consent to, acquiescence in, or ratification of, trustee's improper allocation or distribution of assets."

Unemployment Compensation — *salesmen.* Recovery of an employer's contributions, alleged to be due under

"Stay that way until I call my lawyer. I think our ship just came in."

HEADLINES 1873

New York Times

The Stock Market Closes. Millions of dollars are lost in panic.

Washington Daily

The 14th Amendment to the Constitution is construed for the first time in the Slaughter-House Case.

Chicago Tribune

Frank Shepard of this city has developed a new system of legal research known as SHEPARD'S CITATIONS.

Through this unique method, a lawyer can instantly obtain citations to a case that it formerly took days of search to complete.

The citations are printed in sticker form which are sent to subscribers who in turn paste them on the margins of the reports. Although in use only in Illinois at the present time, it is predicted that within a short time the system will be in use in every state.

Reno News

Silver discovered in Nevada.

Bethlehem News

Bethlehem Steel Works begins operations.

Omaha Sentinel

Remington Fire Arms Co. begins manufacture of a new kind of mechanical writing machine known as a typewriter.

New York Daily

William Tweed found guilty and sentenced.

The year 1873 was a momentous one in many respects as these typical newspaper headlines demonstrate.

For the legal profession it meant the birth of a citation service destined to revolutionize legal research.

Now, eighty years later, tens of thousands of its users term it the lawyer's "indispensable service."

Shepard's Citations
Colorado Springs
Colorado

the Employment Security Act of Arizona, was sought in McClain v. Church, 72 Ariz 354, 236 P2d 44, 29 ALR2d 746, an action by the Employment Security Commission. The defendant was a real-estate broker who claimed inapplicability of the statute to salesmen working on a commission basis only. The statute defined "employment" as "any service . . . performed for wages or under any contract for hire." An amendment of the statute expressly excluding from the term "employment" services performed as a real estate salesman for a commission was not in force at the time of accrual of the obligations herein involved.

A judgment for plaintiff was affirmed by the Supreme Court of Arizona, which, in an opinion by Chief Justice Udall, held that the real-estate salesmen were, under the circumstances of the case, properly regarded as employees of the real-estate broker under whom they were licensed to operate.

The appended annotation in 29 ALR2d 751, discussing "Salesman on commission as within unemployment compensation or social security acts," supplements one earlier annotation on the point and supersedes another.

The Res in the Case

The following provision actually was incorporated in a divorce decree granted in Tulsa County, Oklahoma.

"It is further decreed that the title to the female Bedlington Terrier dog is and shall remain in [plaintiff and husband], but that the custody of said dog shall be and is hereby confided in [defendant and wife], with the right of visitation given to [plaintiff] upon reasonable occasions."
—*Contributed by T. Austin Gavin of the Tulsa, Okla. Bar*

Law

"Of law there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world; all things in heaven and earth do her homage; the very least as feeling her care, and the greatest as not exempted from her power; both angels and men, and creatures of what condition soever, though each in a different sort and manner, yet all with uniform consent admiring her as the mother of their peace and joy."—*From "The Laws of Ecclesiastical Polity" by Richard Hooker (1554?–1600); contributed by Ten Eyck R. Beardsley of the New York Bar.*

Democracy

Democracy, like religion, is an expression of faith, a call to duty from which no man may draw back.—*American Workers' Digest.*

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